



IT IS ORDERED as set forth below:

Date: September 11, 2009

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 09-80319

Kathy Olivia Holt-White,

CHAPTER 13

Debtor.

JUDGE MASSEY

Kathy Olivia Holt-White,

Movant,

v.

CONTESTED MATTER

B & M Management, Inc. d/b/a Turnberry Place
Apartments, Flooring & Ceramic Warehouse,
Inc., OSR Recovery, Unifund CCR Partners,
Phoenix Recovery Group, Inc., LVNV Funding,
LLC, Fernando Favors, Owens Corning Home
Experts, Inc., Cort Furniture Rental Corporation,
Recheck Funding, LLC, Chrysler Financial
Services Americas, LLC,

Respondents.

ORDER DENYING MOTIONS TO AVOID LIENS

Debtor filed thirteen separate motions to avoid judicial liens held by the above Respondents. Twelve of the motions (documents nos. 8-19) were filed on August 10, 2009. The last one naming Chrysler Financial Services Americas, LLC as the respondent (document no. 27) was filed on August 27, 2009. One Respondent, B & M Management, Inc. d/b/a Turnberry Place Apartments, filed a response contesting the contention that its lien impairs any exemption. It is questionable whether the Court has jurisdiction over Unifund CCR based on the certificate of service to that motion.

The Court denies the motions because on the dates they were filed, it was not true, as stated in the motions, that any of the liens impaired an exemption, because Debtor had not claimed any exemptions on those dates. She did not file her Schedules, including Schedule C, until September 1, 2009. Even granting the fact that due to the service of the motions by mail on August 10, 2009, no response was due until September 2, 2009, the failure to file the Schedules prior to or contemporaneous with the filing of the motions deprived the Respondents of a fair opportunity to determine the truth of factual allegations before the deadlines for filing a response stated in the notices served with the motions passed.

The only factual allegation in the motions, which in substance are identical, that attempts to show that a judicial lien impairs an exemption is the statement that Debtor's "interest" in the residence "does not exceed \$8,000 in value." This allegation is contradicted by Debtor's Schedule A, which she executed under oath, that states that her interest in the residence has a value of \$95,000. The \$8,000 figure was undoubtedly derived by subtracting from the current value of Debtor's interest in the residence, the sum of \$87,000 secured by the residence. But the difference is not her "interest" in the property. If the numbers stated in the Schedules with

respect to the residence are accurate, however, the judicial liens would impair the \$8,000 exemption that Debtor claimed on Schedule C.

Schedule A shows that property is jointly held with her spouse, but Schedule D does not show that the debt is joint. It is unclear whether value of the residence is \$190,000 so that Debtor's half interest is \$95,000, or whether its total value is \$95,000 so that Debtor's interest would be \$47,500. It is likewise unclear what the total amount of the mortgage debt is. If the total debt is \$87,000, Debtor's portion would be \$43,500, and if Debtor's interest in the residence were \$95,000, there would be \$43,500 of value to support judgment liens above the exemption.

Holders of judgment liens should be listed on Schedule D. There should be some explanation in any re-filed motion how a claim that is embodied in a judgment can be disputed, as Debtor indicated with respect to the judgment held by LVNV Funding, LLC shown on Schedule F, Sheet 10.

If Debtor re-files a motion to avoid judicial liens, there should be only one motion filed in which all of the entities holding judicial liens are named as respondents. The dates on which those entities obtained judgments and the courts in which those judgments were obtained should be stated. The motion should make clear that the judgments are against Debtor. Any judgments against Debtor's spouse cannot be avoided in her bankruptcy case. (Obviously, if a judgment is against both spouses, the judgment lien against Debtor's property may be avoidable, even though the lien against her spouse's property, including his half-interest in the residence, could not be avoided in this case.)

Debtor's counsel may find it helpful to review the monograph on how to prepare a motion to avoid liens accessible on my page of the Court's website.

For the reason stated, all of the motions to avoid liens filed by Debtor (document nos. 8-19 and 27) are DENIED. The Clerk is directed to serve a copy of this Order on Debtor, Debtor's counsel, the Chapter 13 Trustee, and all respondents at the service addresses stated in the certificates of service attached to the motions.

END OF ORDER